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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 OUSSAMA MANNA,) No. C 07-4504 WHA
13 SHIRLEY AZZGHAYER,)
14 Plaintiffs,) ANSWER
15 v.)
16 MICHAEL CHERTOFF, Secretary,)
17 Department of Homeland Security;)
ROSEMARY MELVILLE, District Director,)
18 USCIS San Francisco District Office;)
EMILIO T. GONZALEZ, Director, USCIS;)
ALBERTO GONZALES, Attorney General,)
19 Department of Justice,)
20 Defendants.)

21 Defendants hereby submit their answer to Plaintiffs' Complaint for Mandamus.

22
I. INTRODUCTION

23 The initial unnumbered paragraphs consists of Plaintiffs' characterization of this action for
24 which no answer is necessary; however, to the extent a response is deemed to be required, the
25 Defendants deny the allegations in these paragraphs.

26
II. PARTIES

27 1. Defendants admit the allegations in Paragraph One; however, Defendants are without
28 sufficient information to admit or deny Plaintiffs' residence.

ANSWER
C07-4504 WHA

2. Defendants admit the allegations in Paragraph Two; however, Defendants are without sufficient information to admit or deny Plaintiffs' residence
3. Defendants admit the allegations in Paragraph Three.
4. Defendants admit the allegations in Paragraph Four.
5. Defendants admit the allegations in Paragraph Five.
6. Defendants deny the allegations in Paragraph Six. Peter Keisler is the acting Attorney General of the United States.

III. JURISDICTION

9 7. The allegations in Paragraph Seven consist solely of Plaintiffs' characterizations of lawsuit
10 for which no answer is necessary, but insofar as answers may be deemed necessary, the allegations
11 in Paragraph Seven are denied.

12 8. Paragraph Eight consists of Plaintiffs' allegation regarding jurisdiction, to which no
13 responsive pleading is required.

14 9. Paragraph Nine consists of Plaintiffs' characterization of this action for which no answer is
15 necessary.

16 10. Paragraph Ten consists of Plaintiffs' characterization of this action for which no answer is
17 necessary.

IV. VENUE

19 11. Paragraph Eleven consists of Plaintiffs' allegations regarding venue, to which no
20 responsive pleading is required.

V. EXHAUSTION OF REMEDIES

22 12. Defendants deny that Plaintiffs have exhausted their administrative remedies. Defendants
23 are without sufficient information to admit or deny whether Plaintiffs and their attorney have
24 inquired about the applications.

VI. REMEDY SOUGHT

26 13. Paragraph Thirteen consists of Plaintiffs' characterization of this action for which no
27 answer is necessary.

28 14. Paragraph Fourteen consists of Plaintiffs' characterization of this action for which no

ANSWER
C07-4504 WHA

1 answer is necessary.

2 **VII. STATEMENT OF FACTS**

3 15. Defendants admit the allegations in Paragraph Fifteen.

4 16. Defendants admit the allegations in Paragraph Sixteen.

5 17. Defendants are without sufficient information to admit or deny the allegations in
6 Paragraph Seventeen.

7 18. Defendants are without sufficient information to admit or deny the allegations in
8 Paragraph Eighteen.

9 19. Defendants admit that Plaintiffs were married on August 29, 2003; however, Defendants
10 are without sufficient information to admit or deny the birth of their child.

11 20. Defendants deny the allegations in Paragraph Twenty. The petition for alien relative
12 (Form I-130) was filed on December 15, 2003.

13 21. Defendants deny the allegations in Paragraph Twenty-One. The adjustment of status to
14 lawful permanent residence application (Form I-485) was filed on December 15, 2003.

15 22. Defendants admit that Plaintiffs' fingerprints were taken on July 8, 2004 and March 28,
16 2006. Defendants are without sufficient information to admit or deny the other dates.

17 23. Defendants admit that Plaintiffs were interviewed on September 22, 2004.

18 24. Defendants deny the allegations in Paragraph Twenty-Four. Plaintiffs' I-130 was
19 approved on October 1, 2004.

20 25. Defendants deny the allegations in Paragraph Twenty-Five. The case was continued for
21 FBI name checks and for further review regarding Plaintiff Manna's non-compliance with
22 NSEERS registration.

23 26. Defendants admit the allegations in Paragraph Twenty-Six.

24 27. Defendants admit the allegation that Plaintiff Manna's application has been pending since
25 June 24, 2004.

26 **VII. CAUSE OF ACTION**

27 28. Defendants deny the allegations in Paragraph Twenty-Eight. The I-130 visa petition has
28 been adjudicated.

1 29. Defendants admit the allegations in Paragraph Twenty-Nine; however, Plaintiff Manna's
2 application is also pending for NSEERS registration.

3 30. Defendants deny the allegations that the I-130 remains pending. The remaining allegations
4 in Paragraph Thirty consists of Plaintiffs' characterizations of the lawsuit for which no answer is
5 necessary.

6 31. Paragraph Thirty-One consists of Plaintiffs' characterizations of the lawsuit for which no
7 answer is necessary.

8 32. Paragraph Thirty-Two consists of Plaintiffs' characterizations of the lawsuit for which no
9 answer is necessary.

10 33. Defendants deny the allegations in Paragraph Thirty-Three. Plaintiff Manna applied and
11 was issued three employment authorization cards, and he is eligible to apply for advance parole.

12 34. Defendants admit the allegation regarding the filing fees; however, the remaining
13 allegations consists of Plaintiffs' characterizations of the lawsuit for which no answer is necessary.

14 35. Paragraph Thirty-Five consists of Plaintiffs' characterizations of the lawsuit for which no
15 answer is necessary.

16 36. Paragraph Thirty-Six consists of Plaintiffs' characterizations of the lawsuit for which no
17 answer is necessary; however, to the extent a response is deemed necessary, the Defendants deny
18 the allegations in Paragraph Thirty-Six.

19 **VII. PRAYER FOR RELIEF**

20 37. Paragraph Thirty-Seven consists of Plaintiffs' prayer for relief, to which no admission or
21 denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny
22 this paragraph.

23 **FIRST AFFIRMATIVE DEFENSE**

24 The court lacks jurisdiction over the subject matter of this action.

25 **SECOND AFFIRMATIVE DEFENSE**

26 The Complaint fails to state a claim against the Defendants upon which relief can be granted.

27 **THIRD AFFIRMATIVE DEFENSE**

28 No acts or omissions by the United States or its employees were the proximate cause of any

ANSWER
C07-4504 WHA

1 injury or damages to the Plaintiffs.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 At all times alleged in the complaint, Defendants were acting with good faith, with
4 justification, and pursuant to authority.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 Defendants are processing the application referred to in the Complaint to the extent possible at
7 this time. Accordingly, no relief as prayed for is warranted.

8 WHEREFORE, Defendants pray for relief as follows:

9 That judgment be entered for Defendants and against Plaintiffs, dismissing Plaintiffs'
10 complaint with prejudice; that Plaintiffs take nothing; and that the Court grant such further relief
11 as it deems just and proper under the circumstances.

12 Dated: November 2, 2007

Respectfully submitted,

13 SCOTT N. SCHOOLS
14 United States Attorney

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16 /s/
17 ILA C. DEISS
18 Assistant United States Attorney
19 Attorneys for Defendants